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Dated: October 30, 2009

Signature: David R. Burns/
David R. Burns, Esq.

Docket No.: 118155-00102
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Michael R. CASWELL

Application No.: 10/502,148

Confirmation No.: 9036

Filed: March 2, 2005

Art Unit: 3742

For: **COFFEE DISPENSING DEVICE AND
METHOD**

Examiner: R. ALEXANDER

MS Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

STATEMENT UNDER 37 C.F.R. § 1.705(b)(2)

Dear Sirs:

1. This statement is respectfully submitted in support of the "Request for Reconsideration of the Patent Term Adjustment Under 37 C.F.R. § 1.705(d)" being filed herewith for the above-referenced patent application. In view of the following, it is respectfully requested that Applicants be granted a Patent Term Adjustment of 1173 days.

2. Pursuant to 37 C.F.R. § 1.705(b)(2)(i), Applicants respectfully submit that the correct period of Patent Term Adjustment is 1173 days. Applicants are entitled to an adjustment of 703 days due to Examination Delays (A-delays) pursuant to 37 C.F.R. §§ 1.702(a) and 1.703(a). Applicants are also entitled to an adjustment of 771 days due to Three-Years Delays (B-delays) pursuant to 35 U.S.C. § 154(b) and 37 C.F.R. § 1.702(b), which requires issuance of a patent within three (3) years after the date on which the application was filed under 35 U.S.C. § 111(a). Pursuant to 37 C.F.R. § 1.704 (a) the Patent Term Adjustment is reduced by 45 days due to Applicants' delays. The Patent Term Adjustment is further reduced by 256 days of overlap

between A-delays and B-delays pursuant to 37 C.F.R. § 1.703(f). Accordingly, Applicants are entitled to a Patent Term Adjustment that is equivalent to the total of the sum of 703 days of A-delays and 771 days of B-delays minus the sum of 45 days of Applicant delays and 256 days of overlap. Accordingly, the correct Patent Term Adjustment is 1173 days.

3. The relevant dates pursuant to 37 C.F.R. § 1.705(b)(2)(iii) and the adjustment that the patent will be entitled to pursuant to 37 C.F.R. § 1.703(f) are set forth as follows:

A-Delays: USPTO Examination Delays Pursuant to 37 C.F.R. § 1.702(a) and § 1.703(a)

Applicants do not dispute the U.S. Patent and Trademark Office (USPTO) A-delays calculated under 37 C.F.R. § 1.703(a). Applicants note that the Issue Notification allotted 658 days of Patent Term Adjustment corresponding to 703 days of USPTO A-delays minus 45 days of Applicant delays.

B-Delays: USPTO Three-Years Delay Pursuant to 37 C.F.R. § 1.702(b) and § 1.703(b)

In the instant case, the Patent Term Adjustment listed in the Issue Notification mailed by the USPTO on August 12, 2009 is 658 days, corresponding only to the A-delays while excluding all B-delays. However, Applicants believe that this Patent Term Adjustment has been made in error. Applicants respectfully note that National stage of the present application commenced under 35 U.S.C. 371(b) on July 23, 2004. The three-year period, for purposes of calculating B-delays, ended on July 23, 2007. Accordingly, pursuant to 37 C.F.R. § 1.703(b), Applicants are entitled to a Patent Term Adjustment that is equivalent to the sum of the number of days in the period beginning on July 23, 2007 and ending on the date that the patent issues. Applicants note that the patent was issued on September 1, 2009. The sum of the period beginning on July 23, 2007 and ending on September 1, 2009 is 771 days.

Overlapping Periods of USPTO A-Delays and B-Delays Pursuant to 37 C.F.R. § 1.703(f)

As set forth in 37 C.F.R. § 1.703(f), the period of adjustment based on the grounds set forth in 37 C.F.R. § 1.702 is the sum of all periods of Examination Day and the maximum period of Three Years Delay, to the extent these periods of delay are not overlapping. Pursuant to 37

C.F.R. 1.703(f), the period of adjustment will not exceed the actual number of days the issuance of the patent was delayed. Applicants note that the U.S. District Court of D.C. has recently clarified that under 35 USC §154(b)(2)(A) the only way a period of Examination Delay (“A-delay”) and a period of Three-Years Delay (“B-delay”) can “overlap” is if they occur on the same calendar day or days. *See Wyeth v. Dudas*, No. 07- 1492. 2008 U.S. Dist. LEXIS 76063 at 9 (D. D.C. Sept. 30, 2008). In the instant case, the B-delays began on July 23, 2007 and the USPTO A-delays ended on April 4, 2008. Accordingly, there were 256 days of overlap between A-delays and B-delays.

Applicants’ Delays Pursuant to 37 C.F.R. § 1.704(a)

Applicants do not dispute the USPTO’s calculation of the Applicants’ delays under 37 C.F.R. § 1.704(a). Applicants note that according to the USPTO automated PAIR system, Applicants accrued 45 days of Applicant delays.

4. In accordance with 37 C.F.R. 1.705(b)(2)(iii), Applicants submit that the above-referenced application is not subject to a terminal disclaimer.
5. In view of 37 C.F.R. 1.705(b)(2)(iv)(A), Applicants submit that they are unaware of any circumstances during the prosecution of the application, beyond the 45 days already calculated by the USPTO, that would constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.
6. In view of 37 C.F.R. 1.705(b)(2)(iv)(B), Applicants submit that there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.
7. In view of the foregoing, it is respectfully requested that this Application for Patent Term Adjustment be favorably considered and that the issued patent reflect a Patent Term Adjustment

of 1173 days.

8. In accordance with 37 C.F.R. 1.705(b)(2)(i), Applicants submit herewith the fee set forth in 37 C.F.R. 1.18(e). It is Applicants' understanding that this \$200.00 fee is required for this application for Patent Term Adjustment. However, should any additional fees be necessary, the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 50-4876, under Order No. 118155-00102.

Dated: October 30, 2009

Respectfully submitted,

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